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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EMELIA M. PASTERNAK,	)	Case No. 4:07-cv-04980 CW (BZ)
	)	
Plaintiff,	)	DECLARATION OF ANDREW J.
	)	OGILVIE IN SUPPORT OF
v.	)	PLAINTIFF'S OPPOSITION TO
	)	CAPITAL ONE'S MOTION FOR
TRANS UNION, LLC, EXPERIAN	)	PROTECTIVE ORDER AND FOR
INFORMATION SOLUTIONS, INC.,	)	ORDER QUASHING SUBPOENA
EQUIFAX INFORMATION SERVICES, LLC,	)	
and CAPITAL ONE BANK, a national	)	Date: July 23, 2008
association,	)	Time: 10:00 am
	)	Courtroom G, 15th Floor
Defendants.	)	

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I, Andrew J. Ogilvie, declare as follows:

1           1.       I am an attorney licensed to practice in California and admitted to practice  
2 before the United States District Court for the Northern District of California. I represent  
3 Emelia Pasternak, plaintiff in this action.  
4

5           2.       I make this declaration in support of plaintiff's opposition to Capital One's  
6 motion for a protective order and for order quashing Ms Pasternak's subpoena.  
7

8           3.       Emelia M. Pasternak is the victim of identity theft, twice. In 2003 Capital  
9 One received a credit card application from an imposter who was using an address at  
10 Gayley Avenue in Los Angeles and claiming to be Ms Pasternak. Capital One opened the  
11 account, extended \$500 credit, discovered the fraud, closed the account and called Ms  
12 Pasternak to tell her to call Equifax and put a fraud alert on her credit file, which she did.  
13

14           4.       A little more than a year later, Capital One opened a second account for an  
15 imposter who was using the same Gayley Avenue address and claiming to be Ms  
16 Pasternak. This time Capital One gave the imposter an account with \$20,000 credit and  
17 enabled the imposter to drain that credit line by sending "convenience" checks with the  
18 account statements. The imposter used the "convenience" checks to withdraw \$19,000.  
19 Then the imposter kept the scam going by sending in "payments" in the form of  
20 "convenience" checks stolen out of the mail from persons with names like Mike La, An  
21 Ly, Carlos Vega and William Powell, all at addresses that were different from the  
22 address on the account.  
23

24           5.       When the stolen convenience checks of Messrs La, Ly, Vega and Powell  
25 bounced, Capital One sent this account to collection agencies. Eventually one of them  
26 found Ms Pasternak at her parents' address in Lafayette, California and she learned of the  
27

1 fraudulent account when she received a dunning call. She filed a police report and  
2 promptly notified Capital One that she was the victim of identity theft. She provided it  
3 with a copy of her police report from the SF police department.  
4

5 6. Capital One ignored Ms. Pasternak's notice of identity theft. When the file  
6 was returned to it by one collection agency, Capital One sent it to another. Ms Pasternak  
7 spent days notifying collection agncies that she was the victim of identity theft. The  
8 agencies quit hounding her, but Capital One was undeterred. When one agency returned  
9 the account, Capital One sent it out to another for more collection efforts. In 2007 it sent  
10 the account to Patenaude & Felix, its collection lawyers in southern California. Ms  
11 Pasternak told them that she was the victim of identity theft and that she had sent the  
12 police report to Capital One and its collection agencies numerous times. They ignored  
13 her and responded by filing a collection action in Contra Costa County Superior Court.  
14  
15

16 7. Several months after that action was filed, Ms Pasternak filed this lawsuit  
17 for violations of the FCRA and of California's identity theft statute. Capital One then  
18 dismissed its lawsuit in Contra Costa County. Pasternak amended her complaint to add a  
19 malicious prosecution claim.  
20

21 8. Around April 2008, I learned from other consumer attorneys (not Mr  
22 Trueblood) that Capital One was about to go to trial in Los Angeles on an identity theft  
23 and malicious prosecution case that also involved Patenaude & Felix. As I understood it,  
24 that case was similar to Ms Pasternak's case in that (i) Capital One had failed to  
25 investigate properly and (ii) it had used Patenaude & Felix to bring its action against the  
26 consumer. I asked Capital One's attorney about that case during the deposition of Ms  
27

1 Pasternak in late May, 2008. She told me that the case had recently settled. I then called  
2 Mr Trueblood and asked if he had deposed employees of Capital One's fraud department  
3 and from Patenaude & Felix. He said they had, but he refused to divulge any information,  
4 including the name of the case, because he was bound by a protective order in that case.  
5 He told me that the protective order would require him to destroy the documents shortly  
6 unless I subpoenaed them.  
7

8 9. I decided to subpoena the depositions and discovery responses from  
9 Capital One and Patenaude & Felix because I have been having a very difficult time  
10 obtaining full and complete discovery responses from Capital One in this case and  
11 because I have depositions later this month in Virginia. I want the materials from *Valdez*  
12 so that prior to going to Virginia I and my co-counsel can familiarize ourselves with  
13 Capital Ones' organization, its fraud investigation practices and policies, and its  
14 relationship with Patenaude & Felix.  
15

16 10. I served document demands and interrogatories on Capital One in late  
17 December, 2007. In February Capital One served responses in which it objected to  
18 everything in General Objections and in individual objections. It said it had not  
19 completed its investigation. It asserted numerous privileges including the "self-critical  
20 analysis privilege" and "bank regulatory privilege" but did not provide a privilege log. I  
21 wrote a comprehensive 'meet & confer' letter trying to resolve discovery disputes  
22 without involving the Court. Capital One's lawyer responded with a letter in which she  
23 explained that "with a large company like Capital One, it takes time to obtain approval  
24 and identify relevant witnesses."  
25

